

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**DWAYNE JOHNSON, DANIEL R. MCBRIDE,
DAVID L. MILLER, et al.,
Plaintiffs,**

v.

Case No. 05-C-1058

**MATTHEW FRANK et al.,
Defendants.**

ORDER

On October 12, 2005, pro se plaintiffs Daniel R. McBride and David L Miller were ordered to pay initial partial filing fees of \$1.64 and \$1.98 respectively to the clerk of court within twenty-one days of the court's order, pursuant to the provisions of the Prison Litigation Reform Act (PLRA). See 28 U.S.C. § 1915(b)(1).

By letter of October 24, 2005, plaintiff McBride indicates that he currently does not have funds available in his trust account at the correctional institution where he is incarcerated, although his prison release account contained \$131.14 as of September 22, 2005. He requests that the partial filing fee of \$1.64 be withdrawn from his release account and sent to the clerk of court for this district.

After due consideration, and in light of the plaintiff's request that prison officials take the funds necessary to satisfy the filing fee of \$1.64 out of his release account, the warden at the correctional institution is directed to submit to the clerk of court within twenty-one days of the date of this order \$1.64 as plaintiff's payment of his initial partial filing fee. See Doty v. Doyle, 182 F. Supp. 2d 750, 751-52 (E.D. Wis. 2002).

By motion dated October 21, 2005, plaintiff Miller also indicates that he currently does not have funds available in his trust account at the correctional institution where he is incarcerated, although his prison release account contained \$0.05 as of September 22, 2005. He requests that the partial filing fee of \$1.98 be withdrawn from his release account and sent to the clerk of court for this district. Additionally, he requests an extension of time for which to file his initial partial filing fee.

Given the fact that plaintiff Miller's release account contained only \$0.05 as of September 22, 2005, it is unclear whether there are currently sufficient funds in the release account to satisfy the fee. In light of the plaintiff's request that prison officials take the funds necessary to satisfy the filing fee of \$1.98 out of his release account, however, I direct the warden at the correctional institution to submit to the clerk of court within twenty-one days of the date of this order the \$1.98 or part thereof as plaintiff's payment of his initial partial filing fee. See Id. In addition, I will also grant plaintiff Miller's motion for extension of time and direct that he forward any and all remaining fees to the clerk of court no later than December 9, 2005.

NOW, THEREFORE, IT IS HEREBY ORDERED that plaintiff Miller's motion for extension of time is **GRANTED**. In the occasion that plaintiff's release account is insufficient to cover the initial partial filing fee of \$1.98, he is given until December 9, 2005 to pay the initial partial filing fee.

IT IS FURTHER ORDERED that, upon the request of the plaintiffs McBride and Miller, the warden at the correctional institution where the plaintiff is incarcerated shall withdraw \$1.64 and \$1.98 respectively from the plaintiffs' release accounts and forward

those sums to the clerk of this court as plaintiffs' initial partial filing fees in this action. Such payment is to be made within twenty-one days of the date of this order.

IT IS ALSO ORDERED that copies of this order be sent to the warden at Fox Lake Correctional Institution and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857

Dated at Milwaukee, Wisconsin, this 2 day of November, 2005.

/s _____
LYNN ADELMAN
District Judge